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ON

THE REFORM OF CRIMINALS AND OF PRISONS.

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THE Abolition of the Punishment of Death, in all but the most atrocious cases, deserves to be commemorated as the triumph of justice and humanity over the most sanguinary and inefficient code that ever stained a civilized people. Severe to the criminal, it was indulgent to the crime. Offences were encouraged by a rigour that led to impunity in a great majority of instances, and to uncertainty in all. That the efficacy of punishment depends on its certainty and promptitude, and that these are in inverse proportion to its severity, are truths on which all penal legislation, whether applied to life, liberty, or property, ought to be based. In every department of English law, statutes are to be found, which have been rendered nugatory and obsolete by their own overstrained enactments. In the criminal branch, it was attempted to correct this error, by reserving the execution of the law for hardened offenders; for cases where a sufficient quantity of crimes had been committed to make

up for the lightness of each offence when separately weighed against its penalty. The evil that has been accumulated under this system, is now to be opposed by secondary punishment.

The plan of exterminating criminals ripened in crime, being abandoned, the execution of the minor sentence, and the ultimate destiny of the prisoner, must be viewed as matters of momentous import to the public. The living convict may become, on his liberation, an active instrument of evil. For its own sake, society should look to his improvement, and provide, by due discipline and instruction, that the interval of his punishment may conduce to his reformation, and to the security of others, as well as himself, against his relapse.

Corrective punishment has hitherto failed in this country from two causes. In the first place, it has not been calculated to produce a reform of character in offenders; secondly, discharged prisoners find no means of honest employment, and have no resource for subsistence, but in renewed crime. There are exceptions, but this is the general result.

When it is in contemplation to give to magistrates, in certain cases, the power of conviction now vested in juries, it should be remembered that the effects of a conviction, however summary, may, and too probably will, endure for the remainder of the prisoner's life. It is the brand on the character, not the bodily infliction, that he has most to dread. It is the operation of the sentence as one of exile from all honest employment, that the community, which must receive the

offender again for good or for evil, ought to fear. Magistrates are habituated in the routine of duty, to consider the period of incarceration as the limit of punishment; but whatever is its appointed term, it acts, under the existing system, with rare exceptions, as an endless proscription from every respectable pursuit in this country. The repugnance to admit into any employ a discharged prisoner, may attach to him less as a convict, than as one who has passed through the contaminations of a gaol; but until prisons generally shall be so constructed and ruled as to administer a discipline calculated to purify and reform offenders, the sentence as to its severest effects may be for life.

It was ever a strong argument against capital punishment, that a mistake in its infliction, owing to false testimony, or a false conclusion from true, was irreparable. In minor cases, much cruel and remediless mischief may be the result of convictions founded on a wrong estimate or application of what is sworn; an error often induced by neglect, or ignorance of those judicial rules of evidence, which are safeguards of truth, or by a want of discernment into the moral probabilities of the allegations; too much regard to the positive, too little to the circumstantial testimony of the witness—that afforded by his character, motive, or real object. Few crimes are so prevalent as perjury, none so rarely punished. It eludes detection, and even suspicion, the most frequently in places where there is the greatest promptitude to repress other

offences. It is one of the many anomalies in English law, that it ascribes infallibility to tribunals cognizant of criminal matters; while, in all other concerns, it makes ample allowance for human infirmity. A question involving property only, and of trivial amount, may be carried through three Courts successively, before the condemnation of a defendant shall be complete; but a single verdict against life, or against liberty and character, in a criminal case, is final. In France, where there are criminal courts of appellate jurisdiction, there are numerous records, in capital cases, of the conviction, and the subsequent acquittal of the same accused party, on the very same evidence, by different juries. A few of these are given in the Appendix; they are found in one half year. How many "*Aventures Judiciares*," parallel to those of *Pierre Berthe*, might have been read in our own language, if the crimes of witnesses, and the errors of jurors and judges, had not been buried together in the convict's grave.

As the first step towards repressing crime and improving prisons, the gaols throughout the kingdom* should be placed under judicious and uniform regulations. At present, the system, if that term may be applied to anything so incongruous, of prison discipline in this country occasions great inequalities in the execution of justice, the same sentence, against the like

* Most of the Town Councils, as well as County Magistrates, have expressed a desire for the improvement of the prisons and their rules.

offenders, being enforced by means of full, or extremely meagre diet, solitary or social confinement, rigid silence on every subject, or freedom of discussion on all crimes, and their modes of perpetration, among prisoners of all ages and grades in guilt, with other varieties in regard to dresses, ablutions, ventilation, exercise, punishments, medicine, ethics, and theology. Of the prisons, a few, having themselves undergone reform to a considerable extent, have effected the reform of some offenders; but among the far greater number of criminals, from defects in the construction or discipline of these gaols, they have, it is feared, contaminated more extensively than they have cured. The rest of the prisons, that is to say, all, with rare exceptions, diversified as they are in their forms of government, contribute to one, and but one, result—not the reform, but the depravation of the prisoner, to widen and deepen his knowledge of crime, and make him reckless of the consequences. Were the increase and diffusion of moral evil the aim and intent of punishment, if the sentence prescribed “imprisonment, with instruction in criminality by experienced artists,” no other preserves of vice than these prisons could be desired for the purpose of its dissemination over the untainted parts of the community.

A vicious gaol infects not its neighbourhood only, but spreads the moral leprosy over society at large. Some of the prisons expect credit for their re-committals not exceeding 50, others not 30 per cent.; but if these proportions could, under any circumstances, call for

praise, it could be due only on the assumption, that all their relapsed convicts return to their former prisons, a measure of retributive justice to the gaols which does not take effect. In some gaols there is an avowed plan to prevent the return of thieves, by making their dietaries as little inviting as possible ; a scheme which claims the double merit of a moral check, and a saving in the rate ; but a confirmed thief wants no other inducement than the disadvantage, and increased danger of detection as an old offender, to shift the scene of his operations, except when strong temptation to plunder, or revenge, detains him near his ancient haunt. The emissions of the county or town gaol, are not, with those of the provincial bank, narrowed to a district circulation. The currency of the former has most success where its place of issue is unknown.

The discipline of prisons in this country was founded in ignorance of human nature, by a knowledge of which should be meant something more than an acquaintance with the artifices of vagrancy and larceny. The execution of it was at the same time intrusted to gaolers and turnkeys, many of whom were preferred for their early familiarity with the ways of vice, ferocious and profligate. Under their rule, the prisoner was often treated more as a machine than a sentient being ; at best, he was regarded as a creature governed and to be governed by animal impulses alone. This last error, amidst considerable improvements, where there has been a vigilant magistracy, in the brutal and debasing system we are referring to, and in the officials, is preserved and acted upon

in most English prisons to this day ; and yet, nothing is more certain than that it is the moral constitution of the prisoner that will decide the effect of his punishment. He is seldom amended in his disposition by external treatment, more rarely still when it is galling and irritating, from violence or caprice. He is restrained, perhaps, from any overt act ; but nourishes a sullen and malignant purpose to defeat the law in its attempts to reclaim him, and avenge himself upon society on his return to freedom. Chains, stripes, every species of physical suffering, from privation on the one hand, and licentious indulgence on the other, have been liberally enough experimented upon the prisoner. His moral faculties seem rarely to have been taken into the account at all, never duly appreciated as agents of reform. They may prevail against the demoralising influence of the worst of gaols ; but it is too frequently seen, that of the emotions of shame and remorse, which were implanted in the breast of man as restraints from crime, the first is soon lost after commitment, the last never awakened or quickly stifled. We have evidence enough, in our own records, of what has been effected by their extinction or perversion. Let us inquire what, in other countries, is the estimate of their value, when encouraged and cultivated as instruments of reformatory discipline :—

“ Dieu ” (states a celebrated Physiologist* consulted by the French authorities) “ nous a tellement organisés,

* M. Pariset. See Lucas “ Des Garanties Repressives.”

“ que pour nous les douleurs morales, les plus péné-
 “ trantes, sont celles qui naissent de la conscience, et
 “ du jugement que nous portons sur le caractère de
 “ nos actions, lorsque ce jugement nous conduit à ce
 “ résultat que nous avons été les ennemis des hommes,
 “ que nous avons justement perdu leur appui, provoqué
 “ leur indignation, &c. Cette vue de l'esprit suscite
 “ en nous le repentir, le remords, la honte, &c., et cette
 “ affliction est d'autant plus énergique, que le mal que
 “ nous avons fait, est plus grand, et que nous en avons
 “ une perception plus nette, plus vive, plus distincte.”

After adverting to certain bodily privations and inflictions, he proceeds to consider their effect on the mind and temper of the prisoner, which he states to be—

“ Indisposer le prisonnier contre ses chefs, contre la
 “ loi, contre tous, et le distraire de la douleur morale.
 “ Or c'est une douleur morale qu'il faut considerer ici
 “ comme le seul instrument d'amélioration.”

Every gaol should provide as means essential to the reform of offenders and the protection of the public,

1st. The separate confinement of each prisoner.

2nd. His religious and moral instruction.

3rd. His instruction in some useful mechanical art or calling.

And Government should provide,

4th. Encouragement to the emigration of prisoners on their enlargement.

1st. Separate confinement is attended with advantages which no other system can ensure. It is most dreaded as a punishment, and by far the most effective

in promoting reform. It conduces to self-examination and reflexion, to the efficacy of religious reading and instruction, and to the influence of “*la douleur morale*.” It preserves the prisoner from the contamination of associates more advanced in crime, and from the formation of friendships and acquaintances that might be injurious to him on his return to society.

By separate confinement, is not meant, seclusion without occupation, but accompanied by the supports and resources referred to under the 2nd and 3rd heads ; and security for the health of the prisoner in due ventilation and temperature, exercise and adequate diet. Solitary, unoccupied confinement should never be resorted to, except for a short period, as a penance upon those who wilfully oppose the more lenient plan of treatment. If long continued, it tends to produce, in an eminent degree, the evils pointed out at the close of the French extract, and worse.

As a separate system is designed to act chiefly by its corrective influence on the mind, it requires for its salutary administration, a vigilant superintendence by more discerning visitors than turnkeys. Well executed, it will be found an effectual, and in most cases, the only effectual engine of reform. When the prolonged endurance of it leads to unfavourable results, the prisoner should be placed in a class upon the silent system, which is the best substitute for the separate.] Some melancholy failures, attributed to the separate system, have had their origin in religious terrors.

2ndly. The religion administered in capital cases

in London, if we may judge from some memorable specimens, is at best a species of mysticism that lays too much stress on sensations and experiences, too little on a discharge of the relative duties, on the conscience void of offence toward God, and toward man. A change of heart, wrought by a saving faith, is the greatest of all blessings, wherever it has been bestowed; but a mere excitement of the feelings, or the fancy, which may owe its rise to no spiritual, or even rational influence, should not pass for conviction or conversion. In condemned convicts, contrition and remorse have been so transient as to admit of their being brought to the scaffold in a state of rapture and assurance. This excitation is, under secondary punishment, shortlived, and seldom leaves in its place, either moral fortitude, or Christian hope.

Very great numbers of prisoners are discovered, on their entrance, to be ignorant of the simplest elements of revealed truth, and many are as destitute of all impressions of natural religion. Missionaries to some of the prison reservoirs, Saffron Hill, Seven Dials, the most southerly settlements in Southwark, the colonies of crime in the neighbourhood of Whitechapel and Westminster, and many other places in England, might find as gross a spiritual darkness as once overspread, and is now happily dispersed, from Rarotonga and Tahiti.* Few of the heathens of London and its

* See "Williams's Enterprises" exhibiting, in the isles of the Pacific, the influence of Christianity in promoting civilization, freedom from vice, and other slavery, commerce, and peace. Missions to those regions are acquiring a national, in addition to their religious importance.

suburbs have ever heard seriously of the existence of the Deity, or know the distinction between Hell and Heaven. When society begins to punish the violation of their duties to itself, all must allow it to be reasonable, and many may think it would have been but fair, at an earlier period, that it should provide effectual means of imparting to them some instruction in the nature and sanctions of those obligations. Under every well regulated system of gaol management, a course of religious training will be an essential part of reformatory discipline, and sound scriptural edification in the cell will be preferred to either Antinomian doctrine, or moral precept, delivered in a profligate day ward.

3rdly and 4thly. To prevent the convicted person from returning to the ranks of crime, he should, by instruction in the gaol, acquire a knowledge of some mechanical art, or useful calling, that may enable him to earn an honest livelihood in his own or in another country ; and, at the end of his sentence, should be provided, at government expense, with a passage, and other aid (the amount of which might be regulated by the character he acquired in prison, and thus act as a reward for good conduct) for the purpose of his emigration. Both these provisions, for a released prisoner, would constitute the cheapest, and most secure protection against his relapse.

The diffusion of crime, the progress of the sensual or malignant passions in an individual, and among all within his influence, and their influence, seems to be

equally disregarded by those who commit offences, and those who ought to repress them. Never could the propagation of evil be more fearfully exemplified, than in the career of a discharged convict, in a society that denies him the means of retreat out of it, and all refuge within it, except among his former associates in vice, and makes continued delinquency the tenure of his existence. As no impost drains an individual or community so much as crime, and as the reform of one criminal may prevent, first and last, the ruin of thousands, no extravagance in money or guilt, could be so lavish of both, as the economy that would withhold from him the requisites for industry and emigration.

The country should be protected in earlier stages against the pecuniary and moral cost resulting from some commitments and convictions. It is impossible not to lament that the magistrate is so often called upon, and interposes, to entertain frivolous or inadequate, improper or ill-evidenced charges, where the grievance would redress itself; or, if not, the remedy is a far greater evil than the complaint, or where it is preferred on testimony that has little or no chance before a jury. If in any such cases, interposition be imperative on the magistrate, he might, advantageously to the public, be relieved from the obligation to commit.

The criminal judicature is now resorted to in cases of youthful transgression, which were wont to be settled, without expense or exposure, by the authority of the

parent, or the master, a power with which each of those relations is by law invested, but which seems to be dormant, except for the purpose of casting upon the community the support of the offender. One recent instance will serve to exhibit a class of cases, which, the operation to the same end, of various causes, such as, negligence, malignity, the prospect of gain, temporary irritation, fostered by the facility of commitment, renders of frequent occurrence :—A grocer's apprentice, with whom a fee had been paid, purloined a few cigars. It was his first offence, and confessed with contrition, and that terror of a gaol that is felt on the outside of it, by those who have not, but seldom or never by those who have once, as prisoners, entered within its walls. Summary correction would have answered every useful purpose of conviction. The lad was fully committed, and, after imprisonment, tried, and again consigned to gaol. The grocer now takes a new apprentice; and the country takes his old one, in some shape or other, perhaps that of a rogue for life, reacting on the community, under the impulse of the* wickedness and want its gaols had doomed him to. Even if he have the rare felicity of being sent to a gaol capable, by its construction and discipline, of giving a fit reception to such an offender, still the benefit of the community, for whose welfare, and not for the private pique or gain of prosecutors, magistrates are appointed, would have been promoted, by remitting him to his master's authority, which was adequate to his punishment; the

* “Flagitium, egestas, consciusque animus exagitant.”

authority of the master, or parent, might of course, on his application, be exercised by an officer, under the control and order of the magistrate. A reformatory, or refuge, on a plan resembling that of the Philanthropic Society,* might be the best receptacle of the refractory.

Another description of cases may be referred to, as evidence of an unwise interference of the magistrate, though some have been found to boast of their exercise of a jurisdiction that belongs to the Courts of Common Law or Equity. These are instances in which some matter of account is alleged to be accompanied by circumstances of constructive fraud, with the view of bringing it within a magistrate's range of power, and effecting terms under terror of commitment. If the magistrate entertain the case, the accused, eventually successful against the charge, will, nevertheless, have a very slender chance of redress for having been dragged before a tribunal of crime. Some check was given, not long since, to applications for this exercise of commitment, in a verdict of heavy damages, against the accuser. On a motion for a new trial on the ground of excess, the Court of Common Pleas refused it, and one of the ablest judges of that Court declared, that he considered a criminal accusation made to enforce a civil claim, as calling for exemplary compensation to the accused.

In cases where the complainant is, morally, not the least culpable party, he being the tempter ; as in the

* In St. George's Fields.

unguarded and negligent exposure of goods, which are consequently stolen ; where defalcation and embezzlement are the sequel of the employer's neglect of the accounts, or the conduct of his employé ; where the offender has been inveigled by the accuser into the commission of a fraud or other crime ; in these cases, the recurrence of the offence would be best prevented by leaving the complainant to the penalty of his own connivance, or an indictment, or other remedy. Even the impunity of the offender would be a less evil than the encouragement of the system, which calls upon the law to avenge or repair, at the public cost, injuries which individual vigilance or honesty should have prevented.

The disproportion between commitments and convictions would be materially lessened by a closer attention, in the outset, to the admissibility on the trial, and the credibility of what is adduced in support of an accusation.

If in these cases, and others that might be enumerated, more repose to the arm of the magistrate would be better for the public, there is a great supply of others in which it might be beneficially exerted, but from a real or supposed want of power, it is wholly inert. Is no attempt ever to be made to reach some of the many sources of crime, which, unobstructed, as they now are, swell the tide of iniquity that overflows our gaols, and, after gathering all their impurities, is again left to pursue its course ? Are the haunts and recesses of vice, where it is reared and trained by vete-

ran delinquents, never to be visited but by its retainers and victims? Is it still to be suffered, in every stage of immaturity, and of confirmed corruption, to spread out its enticements in public, without shame, and without fear, infesting the streets, the theatres, the markets, almost all places of open resort? Other affinities among the vices, and the combinations they lead to, may be less easily traced, but prostitution, drunkenness, and plunder are associated in every page of the annals of crime. Nothing is more clearly attested than the connexion between offenders of the calendar and profligate women. It is at the instigation, or under the influence of the latter, and to supply their expenses, that most forgeries, robberies, and embezzlements have been committed. Yet with that evidence before us, in no country in Europe is the display of temptations to a crime, closely linked with others most fearful to society, so flagrant as in England. The saloons of the play-houses in London have furnished to its gaols and scaffolds, more recruits from among clerks, apprentices, and shopmen, than any other avenue of vice whatever, and these are in the immediate vicinity of a paid magistracy.

APPENDIX.

ERREURS DE LA JUSTICE HUMAINE EN MATIERE DE CONDEMNATIONS CAPITALES.

Gaz. des Trib. 20 Juillet, 1826.—Michel Ferrié, de Sigeau, *condamné a mort*, comme coupable d'assassinat, par la Cour d'Assises de l'Aude vient d'être jugé de nouveau par la Cour d'Assises du Département de l'Hérault. Le jury a résolu *negativement* la question de la préméditation. Il est encore à remarquer que le jury n'a déclaré l'accusé coupable d'homicide volontaire à la suite de provocation qu'à la simple majorité. La Cour a condamné l'accusé à *cinq ans d'imprisonnement*.

Gaz. des Trib. 4 Septembre, 1826.—Encore un exemple de l'incertitude des jugemens humains. Le nommé Chatain, accusé de plusieurs infanticides, avait été *condamné a la peine capitale*, par la Cour d'Assises de la Drôme. Il vient d'être *acquitté* par la Cour d'Assises de l'Isère.

Gaz. des Trib. 14 Septembre, 1826.—Un homme est traduit devant une Cour d'Assises, sous le poids d'une accusation capitale. Il fait de vains efforts pour se justifier ; *l'arrêt de mort* est prononcé contre lui. Cependant il s'est pourvu en Cassation, l'arrêt est cassé, l'accusé est renvoyé devant une autre Cour. Sans doute le même sort l'y attend, les mêmes preuves qui avaient déterminé la conviction du premier jury, vont prevaloir encore. Non, son *innocence* est *proclamée*, il est rendu à la liberté, il est au sein de sa famille.

Telle est l'esquisse fidèle des aventures judiciaires de Pierre Berthe, *condamné a mort*, comme assassin, par la Cour d'Assises de la Marne, *et acquitté* par cette de l'Aisne.

Quelle source de réflexions dans un fait de cette nature !

Gaz. des Trib. 20 Octobre, 1826.—On se rappelle que le nommé Brion a été *condamné à mort* le 4 Août dernier, par la Cour d'Assises

de la Seine Inferieure. Pendant les délais du pourvoi en Cassation, des renseignemens ont été donnes a la Justice d'après lesquels *la veracité de plusieurs termoignages* pourroit etre *suspecté*. Un sursis a l'execution de l'arrêt a été ordonné par le garde des sceaux.

Gaz. des Trib. 19 Novembre, 1826.—La Cour d'Assises de Riom s'est occupée de l'affaire du nommé Pierre Courraud, accusé de tentative d'assassinat et déjà *condamné à mort* par la Cour d'Assises de Moulins. Courraud a été *acquitté*.

Several other cases of the same description, which occurred with the above in one half year, may be found in the *Tableau Supplémentaire* annexed to the Treatise "*Du Système Penal et du Système Repressif*," Paris, 1827. The cases were taken from the six months immediately preceding the publication.

